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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN JOSE

13 IN RE: HIGH-TECH EMPLOYEE  
14 ANTITRUST LITIGATION

Case No. 5:11-cv-2509-LHK

**DEFENDANTS' UPDATED CASE  
MANAGEMENT STATEMENT**

15 THIS DOCUMENT RELATES TO:  
16 ALL ACTIONS

Date: October 21, 2013  
Time: 2:00 p.m.  
Courtroom: 8, 4th Floor  
Judge: The Honorable Lucy H. Koh

1 Defendants Adobe Systems, Inc., Apple Inc., Google Inc., and Intel Corporation submit  
2 this update for the Court in advance of the October 21, 2013 Case Management Conference, in  
3 order to inform the Court of developments subsequent to the previous joint case management  
4 statement filed September 26, 2013 (Dkt. 508). Defendants asked Plaintiffs to make this a joint  
5 filing and met and conferred with Plaintiffs to that end. Plaintiffs refused, stating that they did  
6 not believe any updated statement was necessary or appropriate.

7 **I. UPDATE REGARDING CLASS DATA COLLECTION**

8 Since submitting the prior case management statement, the non-settling Defendants have  
9 continued to meet and confer regarding Plaintiffs' request for employee data in connection with  
10 their Preliminary Approval Motion. As Defendants understand it, Plaintiffs' current position is  
11 that Defendants should deliver to the claims administrator retained by Plaintiffs and approved by  
12 the Court, in an electronic database format, from the information in Defendants' human resources  
13 databases for the class period: the full legal name, Social Security number, all known email  
14 addresses, last known physical address, dates of employment in that Defendant's class job titles,  
15 and associated base salary by date and relevant class job title of each class member who was  
16 employed by that Defendant. *See* Preliminary Approval Motion at 16-17; Proposed Order  
17 Granting Preliminary Approval Motion ¶ 14.

18 As Defendants noted in the previous case management statement, Plaintiffs had not raised  
19 this request prior to filing their Preliminary Approval Motion. After meeting and conferring, the  
20 Parties have reached some agreement regarding the timing and scope of Plaintiffs' requests.

21 Plaintiffs and Defendants agree that, whatever information Defendants are ordered to  
22 produce, no information should or will be produced before the Court certifies a settlement class  
23 and until there is certainty as to the scope of that class. If a settlement class is certified,  
24 Defendants will be required to produce information for only current or former employees  
25 included within the settlement class. Further, the parties agree that any production of data will be  
26 produced not directly to Plaintiffs' counsel but to the claims administrator retained by Plaintiffs  
27 and approved by the Court to give notice and administer the claims process. Finally, Defendants  
28

1 have agreed to produce the full name, email address(es), and physical address data maintained in  
 2 their human resources databases for current and former employees who are included within the  
 3 settlement class.

4 The Parties, however, have not reached agreement on whether Defendants will produce  
 5 Social Security numbers, or job title and salary information for specific employees. Defendants'  
 6 position is as follows.

7 Social Security Numbers: Defendants do not agree to produce Social Security numbers of  
 8 their current or former employees. Plaintiffs should provide notice using the name and address  
 9 data first, and use publicly available sources for changed address information, such as the  
 10 National Change-of-Address list (<http://www.nationalchangeofaddress.com>) before seeking  
 11 private Social Security data. Defendants have not previously produced Social Security numbers  
 12 to Plaintiffs in this action. Disclosure of someone's Social Security number "can raise serious  
 13 privacy concerns." *See In re Crawford*, 194 F.3d 954, 958 (9th Cir. 1999); *see also, e.g., Cal.*  
 14 *Civ. Code* § 1798.85 (prohibiting public posting of Social Security numbers and prohibiting the  
 15 mailing of materials to individuals that contain their Social Security numbers). Under both the  
 16 California and federal Constitutions and common law, parties may assert privacy rights in  
 17 response to discovery requests. *See, e.g., Soto v. City of Concord*, 162 F.R.D. 603, 616 (N.D.  
 18 Cal. 1995); *Pioneer Elecs. (USA), Inc. v. Superior Court*, 40 Cal. 4th 360 (2007). When faced  
 19 with a request for production of information that implicates a privacy interest, a court must  
 20 balance the potential invasion of privacy against the countervailing need for the information.<sup>1</sup>  
 21 *See Pioneer Elecs.*, 40 Cal. 4th 360.

22 Courts typically do not grant wholesale requests for Social Security numbers at the class  
 23 notice stage. In *Delgado v. Ortho-McNeil, Inc.*, the court outright denied plaintiffs' request for  
 24 Social Security numbers as "inappropriate," permitting only production of names and addresses.

25 <sup>1</sup> Although requests for information relating to class notice are governed by Federal Rule of Civil  
 26 Procedure 23(d) rather than the discovery rules, courts have applied the same privacy balancing  
 27 principles to requests for class members' information in connection with class notice. *See, e.g.,*  
 28 *Los Angeles Gay and Lesbian Ctr. v. Super. Ct.*, 194 Cal. App. 4th 288, 306-09 (Cal. Ct. App. 2011).

No. 07-263, 2007 WL 2847238 at \*3 (C.D. Cal. Aug. 7, 2007). In other cases, courts have deferred production of Social Security numbers until after class notice is attempted, and even then limited the production to class members whose notices were returned undelivered. In *Gilbert v. Citigroup, Inc.*, the plaintiffs argued—just as Plaintiffs do here—that they needed the defendants to produce all class members’ Social Security numbers in order to enable wholesale skip tracing. The court refused, stating that the plaintiffs could in the future move to compel production of Social Security numbers if the name and address information defendants agreed to produce was not “sufficient to provide notice to a large percentage of class members.” No. 08-CV-0385 SC, 2009 WL 424320 at \*6 (N.D. Cal. Feb. 18, 2009); *see also Campbell v. Pricewaterhouse Coopers, LLP*, No. S-06-2376, 2008 WL 2345035 at \*3 (E.D. Cal. June 5, 2008).

Plaintiffs further argue that Social Security numbers are necessary for tax purposes, including withholding and reporting by the claims administrator. But if it is required for tax purposes, any class member who chooses to make a claim may provide his or her Social Security number voluntarily on the claims form as part of the claims process.

Job Title and Salary Information: Defendants do not agree to produce job title and salary information for their current and former employees. To protect the confidentiality of a person’s job title and salary information during discovery, Defendants matched such information to a particular employee ID number, not to an employee’s name. In fact, employee names were not produced with compensation data in this action. Production of an individual’s salary information raises privacy concerns. Defendants have not located, and during meet and confer discussions Plaintiffs did not provide, any case where any court ordered the sort of wholesale disclosure of personal financial information Plaintiffs are demanding here. In fact, in one of California’s seminal cases on disclosure of potential class members’ private information and the impact of such disclosure on privacy rights, the court approved disclosure of names, addresses, and telephone numbers only, justifying that disclosure because that information did not include “details regarding one’s personal finances or other financial information . . . .” *Pioneer Elecs.*, 40 Cal. 4th at 370.

Defendants understand that Plaintiffs are contending they need this information to calculate settlement payments for individual claimants (the payment is based on a formula using a claimant's salary as a base) and to pre-populate a database so that claimants can verify the salary information used to calculate the award. Employees' privacy rights would be better protected if each class member could decide for herself whether or not to reveal such confidential information as part of the claims process.

Dated: October 17, 2013

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1 **ATTESTATION:** The filer attests that concurrence in the filing of this document has been  
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